

REMARKS

In the Final Office Action mailed June 24, 2005, claims 1, 6-8, 11-14, 16, and 25-33 were pending. The Examiner withdrew the rejections of the pending claims over U.S. Pat. No. 5,491,022 to Smith ("Smith") in view of U.S. Pat. No. 6,265,082 to Dunham et al. ("Dunham") in view of Applicants' Declaration filed March 21, 2005, swearing behind Dunham. The Examiner maintained the double patenting rejection of all pending claims and the rejection of claims 1, 6-14, 16, and 25-32 under 35 U.S.C. § 102(b) as allegedly anticipated, or in the alternative, rendered obvious, by U.S. Pat. No. 3,900,625 to Chen ("Chen"). Lastly, the Examiner rejected claim 33 under 35 U.S.C. § 103(a) as allegedly obvious over Chen in view of Smith.

In this Amendment, Applicants amend independent claim 25 to include "a second single layer of halogenated polymeric film, wherein the film consists of one of the following: polyvinyl chloride, polyvinyl bromide, and polyvinylidene chloride, and wherein the laminate passes NFPA 701-1989." Applicants also add claim 34 with the subject matter of original claim 24. After entry of this Amendment, claims 1, 6-8, 11-14, 16, and 25-34 will be pending.

APPLICANTS' SUMMARY OF SUBSTANCE OF INTERVIEW

Applicants thank the Examiner for the courtesy of a telephonic interview with the undersigned on November 3, 2005. The undersigned and the Examiner discussed the noninterwoven fibers disclosed by Chen, but did not agree on Chen's teachings.

PATENTABILITY OF PENDING CLAIMS OVER CHEN

Applicants respectfully traverse the Examiner's rejection of claims 1, 6-14, 16, and 25-32 under 35 U.S.C. § 102(b) as allegedly anticipated, or in the alternative, rendered obvious, by Chen. Independent claim 1, and independent claim 25 as

amended, are directed to a laminate that "passes NFPA 701-1989." Chen does not teach or suggest a laminate that passes NFPA 701-1989. As the Examiner acknowledged, Chen does not explicitly disclose that the laminate passes NFPA 701-1989. The Examiner alleged that Chen inherently discloses a laminate that passes NFPA 701-1989 and placed the burden on Applicants to prove otherwise. Final Office Action at 3. Applicants meet their burden by presenting evidence of samples failing NFPA 701-1989 in the attached Declaration of Philip E. Harris.

Applicants prepared a laminate according to the teaching of Chen, Example 2, cited by the Examiner in the Office Action as allegedly anticipating, or in the alternative rendering obvious, the claimed invention. Final Office Action at 2, 3. The prepared composite consisted of a layer of 3 mil polyvinyl chloride film, a layer of 3 mil low density polyethylene film, a fire-resistant, acrylic pressure sensitive adhesive containing the prescribed amounts of chlorinated paraffin and antimony trioxide, and a grid of noninterwoven nylon fibers coated with the prepared fire-resistant adhesive in between the two layers of film. See Declaration, paragraphs 9-17.

Applicants tested a machine direction sample and a cross direction sample of this prepared composite according to NFPA 701-1989, attached as Exhibit 1 to the Declaration. Both samples failed the test. See Declaration, paragraph 20. The char lengths of each exceeded the maximum allowed char length for an individual sample of any weight per square yard. Compare Declaration, paragraph 21 (table) and Declaration Exhibit 1, Table 4.1, right hand column, page 701-7. Accordingly, Applicants have demonstrated that the relevant laminate taught by Chen does not pass the NFPA 701-1989 test. Applicants have not included the burned samples, but will make them available to the Examiner if requested.

Because Chen does not disclose or suggest at least a laminate that “passes NFPA 701-1989,” Applicants respectfully request the Examiner to withdraw the rejection and allow claims 1 and 25.

Claims 6-8, 11-14, 16, and 34 depend directly from claim 1. Claims 26-33 depend directly from claim 25. These dependent claims are patentable over Chen for at least the same reasons as claims 1 and 25. Applicants request that the Examiner withdraw the rejection and allow these claims.

PATENTABILITY OF CLAIM 33 OVER CHEN IN VIEW OF SMITH

The Examiner’s rejection of claim 33 was based on her application of Chen to claim 25. As Applicants have demonstrated, their claimed invention is patentable over Chen, and the Examiner acknowledged that Chen does not disclose a layer of ethylene vinyl alcohol film. Smith discloses a fire and chemical resistant fabric adhered to a plastic laminate made from a co-extruded pair of polymeric sheets with an intermediate layer of polar resin or hydrophilic polymer. Importantly, Smith does not disclose a laminate that has a “single layer of halogenated polymeric film” and “passes NFPA 701-1989.” Even the combination of Smith and Chen, then, does not disclose or suggest each and every limitation of even the base claim 25. Accordingly, claim 33 is patentable over Chen in view of Smith for at least the same reason that claim 25 is patentable over Chen. Applicants respectfully request that the rejection be withdrawn and the claim be allowed.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the references cited against this application. Applicants therefore request the entry of this Amendment, the

Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: December 22, 2005

By: 
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Attachments: Declaration Under 37 C.F.R. § 1.132 of Philip E. Harris